INITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK	
VICTORIA MALONE,	x Docket No.: 19-cv-05503 (VB
Plaintiff,	7
-against-	: :
TOWN OF CLARKSTOWN, WAYNE BALLARD, in his personal and official capacity as Clarkstown Highway Superintendent, FRANK DIZENZO, in his personal and official capacity as Clarkstown Highway Superintendent, ANDREW LAWRENCE, in his personal and official capacity, DAVID SALVO, in his personal and official capacity, ROBERT KLEIN, in his personal and official capacity, TUCKER CONNINGTON, in his personal and official capacity, and BRIAN LILLO, in his personal and official capacity,	DECLARATION OF LESLI KAHN
Defendants.	±9 •

LESLIE KAHN, an attorney duly licensed to practice law in the state of New York hereby declares pursuant to 28 U.S.C. § 1746, and subject to the penalties of perjury, as follows:

- 1. I am the Town Attorney for the Town of Clarkstown (the "Town"). I have held this position since January 2020. Prior to that time, I served as a Deputy Town Attorney for the Town of Clarkstown since May 2016.
- 2. I submit this declaration in support of the Town's motion for a protective order. I have personal knowledge of the facts set forth herein.
- 3. On July 10, 2018, the Town Attorney's Office was contacted by the Town Highway Department concerning a complaint of harassment made by Victoria Malone against another Town employee, Brian Lillo.
- 4. On July 23, 2018, Vincent Toomey (Labor Counsel to the Town of Clarkstown), Tom Mascola (then Town Attorney) and I met with Ms. Malone concerning her complaint.

During that meeting, Ms. Malone made allegations against Mr. Lillo as well as numerous other coworkers at the Town Highway Department. Ms. Malone also informed us, either that day or in the following day or two, that she had already retained an attorney.

- 5. Document #61, submitted in camera to the court, is a true and accurate copy of handwritten notes that I wrote while serving as Deputy Town Attorney.
- 6. The notes are undated, but I wrote these notes in the second half of 2018. At that time, Victoria Malone, who was represented by an attorney, had already made complaints of harassment against Brian Lillo and raised allegations against other Highway Department employees. The notes were made after Ms. Malone served the Town with her first notice of claim in September 2018.
- 7. Mr. Lillo was represented by attorney Keith Braunfotel with respect to the criminal investigation and charges prompted by Ms. Malone's July 2018 complaint against him.
- 8. The notes in Document #61 reflect my mental impressions concerning Ms.

  Malone's claims and my opinions regarding potential evidence and strategies for the anticipated litigation with Ms. Malone concerning her allegations against Brian Lillo and other Town employees.
  - 9. I did not share the notes in Document #61 with anyone else.
- 10. Document #55, submitted for in camera review, is a copy of a draft investigation report that I received from attorney Vincent Toomey. Mr. Toomey serves as outside Labor Counsel to the Town of Clarkstown.
- 11. Mr. Toomey was primarily responsible for the investigation of Ms. Malone's harassment complaints against Mr. Lillo. At the conclusion of the investigation, he concluded that Mr. Lillo did not violate the Town's anti-harassment policy.

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12. After the start of litigation in this matter, counsel for Mr. Lillo inquired whether

the Town would write a report to formalize its investigation findings that Mr. Lillo did not

violate the Town's anti-harassment policy. Accordingly, I asked Mr. Toomey to draft a

reporting regarding the investigation.

Because litigation with Ms. Malone had commenced, Mr. Toomey sent a copy of 13.

the draft report to me and to outside litigation counsel to the Town, John Flannery and Eliza

Scheibel at Wilson Elser. The draft was sent to obtain legal advice regarding the implications

and effect of producing the report during pending litigation. I had one conversation with Mr.

Toomey and Ms. Scheibel concerning the draft and the pending litigation. Mr. Toomey then

finalized the report. A copy of the final report is attached as Exhibit C to the Declaration of

John M Flannery.

I declare under penalty of perjury that the foregoing is true and correct. Executed this

25th day of November 2020.

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STACY KUO

Notary Public, State of New York No. 01KU6277660

Qualified in Rockland County

Commission Expires March 11, \_